

**PROPERTY ASSESSMENT APPEAL BOARD
ORDER SETTING FORTH ADDITIONAL FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

PAAB Docket No. 2015-015-00079C

Parcel No. 303004935001000

Chuck D. Templeman,

Appellant,

v.

Cass County Board of Review,

Appellee.

Introduction

On May 4, 2016, the Property Assessment Appeal Board (PAAB) issued its Findings of Fact, Conclusions of Law, and Order that modified the assessment of the Templemans' property. That same day, Brett Ryan filed a Motion to Reconsider the PAAB Order on behalf of the Cass County Board of Review.

On May 9, the Board of Review filed a Motion to Re-Open Evidence and for Additional Filing in Support of Motion to Reconsider. Chuck and Linda Templeman resisted the Motion in a response filed May 17. PAAB granted the Motions and set a hearing for June 17 to consider the Board of Review's new evidence.

Having heard the testimony and reviewed the evidence, PAAB now finds:

Findings of Fact

Unless otherwise stated, this Order incorporates PAAB's findings from the May 4 Order. In addition, PAAB also finds:

As noted in the May 4 Order, the dispute involves the assessment of the Templemans' commercial property located at 711 E. 7th Street, Atlantic.

The property's January 1, 2015, assessment was originally \$56,520, which the Templemans protested. The Board of Review denied that protest, and they appealed to PAAB. While the appeal was pending, Cass County received an equalization order that set the Templemans' January 1, 2015, assessment at \$63,870.

The Board of Review submitted that the Templemans sold the subject property on contract for \$59,000, which was recorded just days after PAAB issued its May 4 Order. The Board of Review asserts that as a contract sale, this price requires an "upward" adjustment and supports affirming the assessment. (2nd Motion p. 2). The Board of Review also obtained a letter from Appraiser Radcliff that details his opinion regarding the sale of the subject property. Radcliff notes the transaction is an abnormal sale and then concludes it would require an overall upward adjustment for the fact that it was not marketed by a realtor (calling this a commission adjustment) and an adjustment for the contract condition of sale. He does not opine a final value.

The Templemans state the purchase price of the property was originally \$50,000 rather than \$59,000. However, the buyer was unable to secure a loan from a financial institution. The Templemans noted in their response that the buyer had no funds for a down payment. In order to assist the sale, they negotiated a contract sale price of \$59,000 at 5%. They additionally note the buyer was their tenant. Finally, the Templemans stated their belief that the sale should not have been recorded because no Declaration of Value was ever signed.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also*

Hy-Vee, Inc. v. Employment Appeal Bd., 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Conversely, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account or must be adjusted to eliminate the effect of factors, which distort market value. *Id.*

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

In its May 4 Order, PAAB concluded that the evidence demonstrated the subject property is overassessed. Based on the record as a whole, PAAB concluded the subject's correct fair market value is \$53,000.

The Board of Review believes PAAB has erred because it found the Templemans "offered no evidence of the subject's fair market value, such as an appraisal, comprehensive market analysis, or recent normal sales of comparable properties." (Motion p. 1). Nevertheless, it contends PAAB then relied exclusively on an appraisal that the Board of Review submitted to reduce the assessment. (Motion pp. 1-2). The Board of Review believes the Templemans failed to make a prima facie case that the property is over assessed and the assessment must be affirmed. The Board of Review believes PAAB's decision puts it in the position of not knowing whether to make a defense.

PAAB can find no case law relating to prima facie requirements under Iowa assessment law, and the Board of Review's citations to those requirements in other types of cases have no applicability here. The Board of Review refers to *Bierman v. Weir*, 826 N.W.2d 436 (Iowa 2013). *Bierman* involved a defamation suit appealed to the Iowa Supreme Court after the district court denied both defendants' motions of summary judgment. *Id.* at 440. The Board of Review also cites to *Kiray v. Hy-Vee*, 716 N.W.2d 193 (Iowa Ct. App. 2006) and *Sievers v. Iowa Mut. Ins. Co.*, 581 N.W.2d 633 (Iowa 1998). *Kiray* involved defamation, discrimination, and other tort claims. *Kiray*, at 195. *Sievers* was a suit brought under the Family and Medical Leave Act and the Age Discrimination in Employment Act. *Id.* at 634. The underlying law and procedural posture of the Board of Review's citations are quite different than the present matter and we do not find them controlling.

In the realm of property assessment appeals, the Iowa Supreme Court has stated "it is a basic tenant that the failure to shift the burden of proof in a tax assessment case is not equivalent to the failure to satisfy the burden of proof." *Compiano v. Board of Review of Polk County*, 771 N.W.2d 392, 397 (Iowa 2009). "The burden of proof is one of persuasion, that 'comes into play after all of the evidence is introduced at the hearing.'" *Id.* at 397, n. 3 (citing 2 John W. Strong, McCormick on Evidence § 336, at 409 (5th ed. 1999)). If a taxpayer does not shift the burden of proof, like the Templemans, the taxpayer may still prevail on his claim based on a preponderance of the evidence. *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986). This legal standard has been repeatedly cited by the Iowa Courts and PAAB. Simply put, a taxpayer failing to shift the burden of proof does not result in the assessment being affirmed.

Additionally, in contested cases, the agency must review the record as a whole and all of the evidence regardless of who introduced it. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). In fact, PAAB has been statutorily directed to consider all of the evidence when ruling on appeals. § 441.37A(3)(a). Section 441.39 contains a similar directive to district courts considering assessment protests. In *Compiano*, the Court stated, "The district court first makes an independent

determination on the ground of protest based on all of the evidence.” *Compiano*, at 397. Likewise, in *Richards*, the Court recognized the district court determines valuation issues based on the totality of evidence. *Richards*, at 150.

In this case, PAAB never found the Templemans shifted the burden of proof. Nonetheless, the Cass County Board of Review submitted an appraisal completed by Jeffrey Radcliff of NRH Appraisal Associates, LLC in Council Bluffs. He developed the sales (\$53,000) and income (\$58,000) approaches to value reconciling at \$55,000 “as is” on February 17, 2016; a little over one year following the assessment date.

The Board of Review was under no obligation to present any evidence to support its position. (Motion p. 4). Its decision to offer the appraisal into evidence was a strategic choice. Once in the record, however, PAAB could not simply ignore the appraisal’s existence and its indication that the property’s fair market value was less than its 2015 assessment. *Richards*, 393 N.W.2d at 150. Likewise, in a substantial evidence challenge to a PAAB ruling, the reviewing court must also examine the record as a whole. § 17A.19(10)(f)(3); *Federal Exp. Corp. v. Mason City Human Rights Comm’n*, 852 N.W.2d 509 (Iowa Ct. App. 2014).

The Board of Review now also contends that the contract sale of the subject property for \$59,000, just days after PAAB’s Final Order, supports the assessment and apparently shows the Radcliff appraisal is unreliable. The Board of Review argues that because the sale was on contract, it must be “adjusted upward” to account for this abnormal factor. The letter the Board of Review procured from Radcliff notes the transaction is an abnormal sale. He then concludes it would require an overall upward adjustment for the fact that it was not marketed by a realtor (calling this a commission adjustment) and an adjustment for the contract condition of sale. He does not opine a final value.

Contract sales must be given careful consideration and often require adjustments to reflect true market value. However, these sales may be adjusted upward, downward, or require no adjustment at all based upon the facts of the sale. *Foreman & Clark of Iowa, Inc. v. Bd. of Review of City of Cedar Rapids*, 286 N.W.2d 169,172-73 (Iowa 1979).

In *Foreman*, taxpayers challenged the assessment of their property based on the purchase of the subject commercial building via contract sale. *Foreman*, 286 N.W.2d 169. The district court modified the assessment to \$150,000, the contract sales price. *Id.* at 170-71. The district court noted factors for consideration when adjusting a contract sale that include “the amount of the down payment, the interest rate, the credit and stability of the purchasers, the maturity date, [and] the collateral or the property itself. *Id.* at 172. The Iowa Supreme Court found no basis to disturb the valuation set by the district court and affirmed the district court’s ruling. *Id.* Moreover, in *Payton Apartments Ltd. v. Bd. of Review of City of Des Moines*, the Iowa Court of Appeals noted within the facts of that case that a contract sales price “reflect[ed] the market value of the property *plus* an additional sum the buyer pays for financing.” 358 N.W.2d 325, 328-329 (Iowa Ct. App. 1984).

We recognize that Radcliff used a contract sale in his appraisal and made no sales condition adjustment. 1106 E. 7 sold in April 2014 for \$100,000 on contract. (Ex. F, p. 16.). That property was sold via contract from David and Janet Highfill to Barbara and Judd Meneely. (Ex. F, p. 16). However, Radcliff did not make any adjustment to account for the contract sale condition. (Ex. G, p. 62). Radcliff does not explain why 1106 E. 7 would not require a sales condition adjustment at all but the subject property requires an upward adjustment.

We find his stance on this matter contradictory and believe this demonstrates that a contract sale does not require a *per se* upward adjustment, as the Board of Review contends. Rather, as suggested by *Foreman* and *Payton Apartments*, the adjustment is dependent upon the circumstances of the sale.

Based on the above-cited Iowa law and the facts of this case, we find the property’s sales price would more likely require a *downward* adjustment for the contract sale condition to account for their inherent risk in acting as the financier for the buyer. The Templemans actually sold the property for more than the originally bargained price. The Templemans state they and the buyer originally agreed upon a purchase price of \$50,000; however, after the buyer was unable to obtain the financing, they assumed the risk of the transaction and the sales price was changed to \$59,000 on contract. In

addition, the parties agreed upon the sale of the property under contract with no down payment, further amplifying the risk to the Templemans.

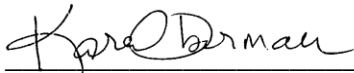
Radcliff's letter also indicates he believes an upward 6-7% commission adjustment would be necessary to account for the fact that the subject was not marketed by a realtor. Without a showing that the subject's sale price was negatively impacted or discounted because no realtor was involved in the sale; we decline to find a commission adjustment is necessary here. For the sake of argument, if we applied an upward 7% commission adjustment to the non-contract sales price (\$50,000), the subject's estimated value would be \$53,500. This is consistent with the appraisal's conclusion by the sales comparison approach and the conclusions of our May 4 Order. Other factors regarding the sale may require additional adjustment, but Radcliff does not specifically identify the type or amount of those adjustments.

Thus, upon consideration and evaluation of the newly offered evidence and arguments, PAAB reaffirms its conclusion that the record supports a finding that the subject property is over assessed under section 441.37(1)(a)(1)(b). We again find the best evidence of the subject's market value is Radcliff's appraisal and his sales comparison approach, which determined a value of \$53,000.

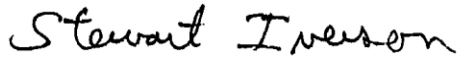
Order

IT IS THEREFORE ORDERED that the Cass County Board of Review's action is modified and the property located at 711 E. 7th Street, Atlantic, Iowa, should be assessed for \$53,000 as of January 1, 2015.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Karen Oberman, Board Member



Stewart Iverson, Board Chair

Copies to:

Chuck D Templeman

Brett Ryan

Cass County Auditor